

THE LAW OFFICES OF

*Special | Hagan*

**New Address**  
**88-08 JUSTICE AVENUE APT. 16I**  
**ELMHURST, NEW YORK 11373**  
**P: (917) 337-2439**  
[SPECIAL@HAGANLAWOFFICES.NET](mailto:SPECIAL@HAGANLAWOFFICES.NET)

Wednesday, April 27, 2022

**VIA ECF**

Honorable District Judge John P. Cronan  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Courtroom 20C  
New York, New York 10007-1312

Re: Kaye v. Health and Hospitals Corporation et. al.  
18-CV-12137(JPC)(JLC)

Dear Honorable District Judge Cronan:

Plaintiff respectfully writes in further support of her application requesting a Teleconference on Defendants' erroneous filing. Plaintiff seeks the Court's judgment in the resolution of this matter in light of the additional claims in the correctly filed May 3, 2019 Amended Complaint and the additional facts alleged. **(Exhibit 1: May 3, 2019 Amended Complaint ECF. Dkt. 29)** In submission of this letter in further support of her application to the Court, Plaintiff seeks to provide the Court with additional clarification on her position. As Defense Counsel duly noted, the May 3, 2019 Complaint has two additional claims and 3 additional pages of pleaded facts. Due to the gravity of the allegations, Plaintiff respectfully avers that this case should be litigated on the merits and not on technicalities.

Defendants' Declaration in Support of their Motion for Summary Judgment, clearly states that their Exhibit A was the May 3, 2019 Amended Complaint, and that in fact it was the operative document. **(Exhibit 2: Defendants' Declaration in Support of Motion for Summary Judgment)** Defendants' position was thereby consistent with the excerpted deposition testimony, when they were corrected on the record. **(Exhibit 3: Deposition of Dr. Kaye as taken on November 15, 2021)** However, the Amended Complaint included as Exhibit A in Defendants' exhibits was in fact the proposed Amended Complaint dated April 30, 2019. ECF Dkt. 25-1. **(Exhibit 4: Proposed Amended Complaint ECF Dkt. 25-1)** Therefore Defense Counsel's Declaration is inconsistent with the Amended Complaint that she submitted as an Exhibit in support of Defendants' motion.

In their response, Defendants raise a number of issues pertaining to the service of the Amended Complaint. Service of the original complaint was properly effectuated at the inception of this litigation. After Plaintiff's application, the Court ordered Plaintiff to serve the Amended Complaint on or by April 30, 2019. Since the Amended Complaint was entitled "Summons and Complaint," ECF Quality Control directed Plaintiff to seek leave of the Court to re-file. In order to show compliance, Plaintiff showed the Court a draft of the complaint. This was consistent with Defense Counsel's observation the day of the

THE LAW OFFICES OF

*Special | Hagan*

New Address

88-08 JUSTICE AVENUE APT. 16I

ELMHURST, NEW YORK 11373

P: (917) 337-2439

[SPECIAL@HAGANLAWOFFICES.NET](mailto:SPECIAL@HAGANLAWOFFICES.NET)

deposition where she said it was a proposed complaint, and where she apologized for deposing Dr. Kaye from the wrong complaint.

Since the original complaint was duly served to all parties, the subsequent Amended Complaints were duly served when they were uploaded to ECF. It should also be noted that Defendants' Answer did not specify the date of ECF Filing. **(Exhibit 5: Defendants' Answer to Plaintiff's Amended Complaint)** Therefore, the Answer was not clear as to which Complaint it addressed. However, as soon as Plaintiff realized that Defendants had operated in error, a record was made that corrected Defense Counsel at Plaintiff's deposition. **(Exhibit 3: Excerpts from Dr. Kaye's Deposition)**

Based on the foregoing, Plaintiff respectfully requests the Court's intervention. Ultimately, Plaintiff respectfully defers to the Court's wisdom in the resolution of this issue, and apologizes for any inconvenience that this issue may have caused the Court.

Respectfully submitted,

/s/

Special Hagan, Esq.

Attorney for Melissa Kaye, MD

Cc: Donna Canfield, Esq.  
Counsel for Defendants